

ESTTA Tracking number: **ESTTA335373**

Filing date: **03/03/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	GlaxoSmithKline LLC
Granted to Date of previous extension	03/03/2010
Address	2711 Centerville Road Suite 400 Wilmington, New Castle, DE 19808 UNITED STATES
Attorney information	Tywanda H. Lord Kilpatrick Stockton LLP 1100 Peachtree Street Suite 2800 Atlanta, GA 30309 UNITED STATES tlord@kilstock.com, tdavis@kilstock.com, lestrin@kilstock.com, tadmin@kilstock.com, rgordon@kilstock.com Phone:404-815-6500

Applicant Information

Application No	77757308	Publication date	11/03/2009
Opposition Filing Date	03/03/2010	Opposition Period Ends	03/03/2010
Applicants	Ottaviani, Frank 46-04 31st Avenue Astoria, NY 11103 UNITED STATES Spinelli, Todd 46-04 31st Avenue Astoria, NY 11103 UNITED STATES		

Goods/Services Affected by Opposition

Class 021. All goods and services in the class are opposed, namely: Electric toothbrushes; Electrical toothbrushes; Manual toothbrushes; Toothbrushes
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration	1006821	Application Date	06/28/1974
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No.			
Registration Date	03/18/1975	Foreign Priority Date	NONE
Word Mark	AQUAFRESH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1972/08/25 First Use In Commerce: 1972/08/25 TOOTHPASTE		


U.S. Registration No.	1662981	Application Date	05/25/1990
Registration Date	10/29/1991	Foreign Priority Date	NONE
Word Mark	AQUAFRESH FLEX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 1990/07/15 First Use In Commerce: 1990/07/15 toothbrushes		

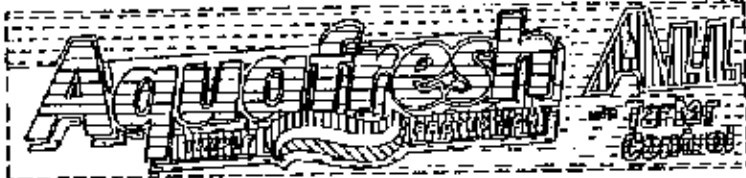
U.S. Registration No.	1805051	Application Date	06/26/1992
Registration Date	11/16/1993	Foreign Priority Date	NONE
Word Mark	AQUAFRESH SENSITIVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1992/08/00 First Use In Commerce: 1992/08/00 toothpaste		

U.S. Registration No.	2314839	Application Date	11/01/1996
Registration Date	02/01/2000	Foreign Priority Date	NONE
Word Mark	AQUAFRESH- ALL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1999/05/24 First Use In Commerce: 1999/05/24 toothpaste		


U.S. Registration No.	2324608	Application Date	05/19/1999
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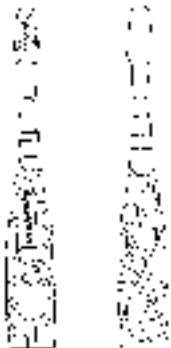
Registration Date	02/29/2000	Foreign Priority Date	NONE
Word Mark	AQUAFRESH TRIPLE PROTECTION		
Design Mark			
Description of Mark	The outline surrounding the drawing is intended to indicate a three-dimensional effect.		
Goods/Services	Class 003. First use: First Use: 1999/03/29 First Use In Commerce: 1999/03/29 toothpaste		

U.S. Registration No.	2326773	Application Date	05/19/1999
Registration Date	03/07/2000	Foreign Priority Date	NONE
Word Mark	AQUAFRESH TRIPLE PROTECTION		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1999/03/29 First Use In Commerce: 1999/03/29 toothpaste		

U.S. Registration No.	2343517	Application Date	06/14/1999
Registration Date	04/18/2000	Foreign Priority Date	NONE
Word Mark	AQUAFRESH TRIPLE PROTECTION ALL WITH TARTAR CONTROL		
Design Mark			
Description of Mark	The outline surrounding the drawing is intended to indicate the border of the packaging.		
Goods/Services	Class 003. First use: First Use: 1999/05/24 First Use In Commerce: 1999/05/24 toothpaste		

U.S. Registration No.	2615649	Application Date	10/07/1998
Registration Date	09/03/2002	Foreign Priority Date	NONE
Word Mark	AQUAFRESH EXTREME CLEAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2002/05/20 First Use In Commerce: 2002/05/20 toothpaste Class 030. First use: First Use: 2002/05/20 First Use In Commerce: 2002/05/20 [chewing gum]		

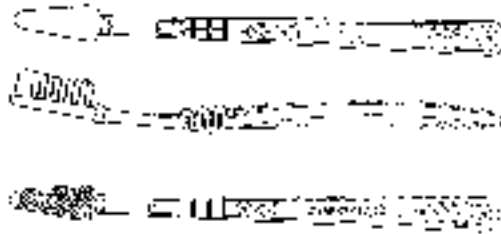
U.S. Registration No.	2706175	Application Date	04/17/2001
Registration Date	04/15/2003	Foreign Priority Date	NONE
Word Mark	AQUAFRESH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2000/09/30 First Use In Commerce: 2000/09/30 Toothbrushes		

U.S. Registration No.	2706176	Application Date	04/17/2001
Registration Date	04/15/2003	Foreign Priority Date	NONE
Word Mark	AQUAFRESH		
Design Mark			
Description of	The mark consists of the word "AQUAFRESH" and the configuration of a		

Mark	toothbrush which has a handle in the shape of a cat with a baby cat standing in front; the drawing depicts both the front and back views of the design mark.
Goods/Services	Class 021. First use: First Use: 2000/09/30 First Use In Commerce: 2000/09/30 Toothbrushes

U.S. Registration No.	2754841	Application Date	04/21/2000
Registration Date	08/26/2003	Foreign Priority Date	NONE

Word Mark	AQUAFRESH
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Design Mark	
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Description of Mark	The mark is consists of "AQUAFRESH" and the three-dimensional, overall appearance of a toothbrush featuring a white background color, a colored band just below the bristles, and on the FRONT: colored inserts, the larger of which has raised circular bumps on the top and bottom, three white stripes separated by two thinner colored stripes; on the BACK: colored inserts, the larger of which has raised circular bumps on the top and bottom, two white stripes separated by three thinner colored stripes, a vertical colored line running from the large insert, through the three stripes to the bottom of the smaller inserts; and, on the SIDE: a serpentine, repeated "S" design on the side of the toothbrush (towards the top of the handle) with a colored stripe running through the "S" design, and a bowed handle.
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Goods/Services	Class 021. First use: First Use: 1990/07/15 First Use In Commerce: 1990/07/15 toothbrushes
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U.S. Registration No.	2759361	Application Date	05/19/2000
Registration Date	09/02/2003	Foreign Priority Date	NONE

Word Mark	AQUAFRESH FLEX TIP MAX-ACTIVE
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Design Mark	<p style="text-align: center;">AQUAFRESH FLEX TIP MAX-ACTIVE</p>
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Description of Mark	NONE
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Goods/Services	Class 021. First use: First Use: 2000/09/30 First Use In Commerce: 2000/09/30 toothbrushes
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U.S. Registration No.	2811892	Application Date	03/26/2003
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Registration Date	02/03/2004	Foreign Priority Date	NONE
Word Mark	AQUAFRESH AQUABLAST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2003/08/18 First Use In Commerce: 2003/08/18 toothbrush cleaners and oral appliance cleaners		


U.S. Registration No.	2814290	Application Date	11/29/2002
Registration Date	02/10/2004	Foreign Priority Date	NONE
Word Mark	AQUAFRESH EXTREME CLEAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2003/11/04 First Use In Commerce: 2003/11/04 Toothbrushes		

U.S. Registration No.	2817605	Application Date	06/02/2003
Registration Date	02/24/2004	Foreign Priority Date	NONE
Word Mark	AQUAFRESH EXTREME CLEAN FOR A WHOLE NEW EXPERIENCE OF CLEAN!		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2003/03/24 First Use In Commerce: 2003/03/24 Toothpaste		


U.S. Registration No.	2820508	Application Date	03/13/2003
Registration Date	03/02/2004	Foreign Priority Date	NONE
Word Mark	AQUAFRESH CINNAMON SPLASH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2003/08/18 First Use In Commerce: 2003/08/18 Toothpaste		


U.S. Registration No.	2906392	Application Date	06/17/2003
Registration Date	11/30/2004	Foreign Priority Date	NONE
Word Mark	AQUAFRESH TRIPLE PROTECTION EXTREME CLEAN		

Design Mark	 The image shows a stylized representation of a toothpaste tube. On the left is a cross-section of the tube's cap. To its right, the word "AquaFRESH" is written in a stylized, italicized font. Below it, the words "EXTREME CLEAN" are written in a bold, sans-serif font, separated by a small diamond symbol. The entire design is enclosed within a dashed rectangular border.
Description of Mark	The mark consists of a tube in the color silver with the stylized words AQUAFRESH TRIPLE PROTECTION in the color blue and a nurdle of striped toothpaste in the colors orange, white, orange underneath and the stylized words EXTREME CLEAN in the color blue with a star in the color yellow between the words EXTREME and CLEAN and a fanciful cap which slopes downwards toward the top of the cap with two flat pieces on either side of the slope in the color white; and color is claimed as a feature of the mark. The matter shown by the dotted lines is not part of the mark and merely serves to show the position of the mark.
Goods/Services	Class 003. First use: First Use: 2003/03/24 First Use In Commerce: 2003/03/24 Toothpaste

U.S. Registration No.	2929043	Application Date	08/02/2004
Registration Date	03/01/2005	Foreign Priority Date	NONE
Word Mark	AQUAFRESH		
Design Mark	 The image shows the word "AquaFRESH" in a large, bold, italicized serif font. Below the letters "AFR" is a stylized, wavy line representing a nurdle of toothpaste.		
Description of Mark	The mark consists of the stylized word AQUAFRESH with a nurdle of toothpaste below the letters AFR.		
Goods/Services	Class 021. First use: First Use: 2003/11/04 First Use In Commerce: 2003/11/04 Toothbrushes		

U.S. Registration No.	2935093	Application Date	03/17/2004
Registration Date	03/22/2005	Foreign Priority Date	NONE
Word Mark	AQUAFRESH		

Design Mark	
Description of Mark	The mark consists of the word AQUAFRESH and the three-dimensional configuration of the toothbrush, which has a handle in the shape of a dinosaur. The lining is a feature of the mark and is not intended to indicate color.
Goods/Services	Class 021. First use: First Use: 1996/09/00 First Use In Commerce: 1996/09/00 TOOTHBRUSHES


U.S. Registration No.	2985548	Application Date	07/21/2004
Registration Date	08/16/2005	Foreign Priority Date	NONE
Word Mark	AQUAFRESH DIRECT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2002/09/30 First Use In Commerce: 2002/09/30 Toothbrushes		


U.S. Registration No.	2985546	Application Date	07/20/2004
Registration Date	08/16/2005	Foreign Priority Date	NONE
Word Mark	AQUAFRESH MAX-ACTIVE		

Design Mark	AQUAFRESH MAX- ACTIVE
Description of Mark	NONE
Goods/Services	Class 021. First use: First Use: 2002/09/30 First Use In Commerce: 2002/09/30 Toothbrushes


U.S. Registration No.	2985544	Application Date	07/09/2004
Registration Date	08/16/2005	Foreign Priority Date	NONE
Word Mark	AQUAFRESH		
Design Mark	AQUAFRESH		
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 1990/07/15 First Use In Commerce: 1990/07/15 Toothbrushes		


U.S. Registration No.	2991636	Application Date	06/20/2003
Registration Date	09/06/2005	Foreign Priority Date	NONE
Word Mark	AQUAFRESH TRIPLE PROTECTION EXTREME CLEAN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2003/03/24 First Use In Commerce: 2003/03/24 Toothpaste		

U.S. Registration No.	3022013	Application Date	04/05/2004
Registration Date	11/29/2005	Foreign Priority Date	NONE
Word Mark	AQUAFRESH ACTIVEZONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2005/02/01 First Use In Commerce: 2005/02/01 Toothbrushes		

U.S. Registration No.	3058216	Application Date	03/31/2004
Registration Date	02/07/2006	Foreign Priority Date	NONE
Word Mark	AQUAFRESH XTENSIVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2005/02/01 First Use In Commerce: 2005/02/01 Toothbrushes		

U.S. Registration No.	3110249	Application Date	06/24/2004
Registration Date	06/27/2006	Foreign Priority Date	NONE
Word Mark	AQUAFRESH IMPACT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2005/02/07 First Use In Commerce: 2005/02/07 Toothpaste

U.S. Registration No.	3110203	Application Date	05/13/2004
Registration Date	06/27/2006	Foreign Priority Date	NONE
Word Mark	AQUAFRESH FOAM IMPACT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2005/02/07 First Use In Commerce: 2005/02/07 Toothpaste		


U.S. Registration No.	3218965	Application Date	10/28/2005
Registration Date	03/13/2007	Foreign Priority Date	NONE
Word Mark	AQUAFRESH WHITE & SHINE		

Design Mark	AQUAFRESH WHITE & SHINE
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2006/02/28 First Use In Commerce: 2006/02/28 Oral care preparations, namely dental gels, dentifrices

U.S. Registration No.	3228880	Application Date	11/18/2005
Registration Date	04/10/2007	Foreign Priority Date	NONE
Word Mark	AQUAFRESH FLOURIDE TOOTHPASTE TRIPLE PROTECTION		
Design Mark			
Description of Mark	The mark consists of the stylized words AQUAFRESH FLOURIDE TOOTHPASTE TRIPLE PROTECTION in the color blue with a nurdle of toothpaste below the letters QUA in the colors red, white and red.		
Goods/Services	Class 003. First use: First Use: 2006/02/28 First Use In Commerce: 2006/02/28 Toothpaste		

U.S. Registration No.	3403171	Application Date	11/04/2005
Registration Date	03/25/2008	Foreign Priority Date	NONE
Word Mark	AQUAFRESH WHITE TRAYS		
Design Mark	AQUAFRESH WHITE TRAYS		

Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2007/01/19 First Use In Commerce: 2007/01/19 Oral care preparations, namely, dental gels, bleaching preparations for cosmetic purposes, tooth whitening preparations and accelerators, cosmetic stain removal preparations Class 010. First use: First Use: 2007/01/19 First Use In Commerce: 2007/01/19 Dental and oral care trays, namely, flexible and disposable dental bite trays

U.S. Registration No.	3658825	Application Date	10/23/2007
Registration Date	07/21/2009	Foreign Priority Date	NONE
Word Mark	AQUAFRESH AMAZING		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2008/12/15 First Use In Commerce: 2008/12/15 Oral care preparations, namely, dentifrices, dental bleaching and cleaning gels, bleaching preparations for cosmetic purposes, tooth whitening preparations, accelerators and stain removal preparations for cosmetic purposes		

Attachments	75191007#TMSN.gif (1 page)(bytes) 75711026#TMSN.gif (1 page)(bytes) 75711027#TMSN.gif (1 page)(bytes) 75727565#TMSN.gif (1 page)(bytes) 76241913#TMSN.gif (1 page)(bytes) 76242063#TMSN.gif (1 page)(bytes) 76035013#TMSN.gif (1 page)(bytes) 76052171#TMSN.gif (1 page)(bytes) 78263219#TMSN.gif (1 page)(bytes) 78460244#TMSN.jpeg (1 page)(bytes) 78385905#TMSN.jpeg (1 page)(bytes) 78453790#TMSN.jpeg (1 page)(bytes) 78453391#TMSN.jpeg (1 page)(bytes) 78448194#TMSN.jpeg (1 page)(bytes) 78264921#TMSN.jpeg (1 page)(bytes) 78396123#TMSN.jpeg (1 page)(bytes) 78393676#TMSN.jpeg (1 page)(bytes) 78440441#TMSN.jpeg (1 page)(bytes) 78417820#TMSN.jpeg (1 page)(bytes) 78742205#TMSN.jpeg (1 page)(bytes) 78756780#TMSN.jpeg (1 page)(bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Tywanda H. Lord/
Name	Tywanda H. Lord
Date	03/03/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GLAXOSMITHKLINE LLC,)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	Serial No. 77/757308
TODD SPINELLI and FRANK)	
OTTAVIANI,)	
)	
Applicants.)	
)	

NOTICE OF OPPOSITION

Opposer GlaxoSmithKline LLC will be damaged by the registration of the AQUAFREE mark, which is the subject of Application Serial No. 77/757308, and states the following for its Notice of Opposition to that application:

1. Opposer is the owner of the inherently distinctive trademark AQUAFRESH used alone and together with other words and/or designs (the “AQUAFRESH Marks”), for various oral care products, including without limitation, toothbrushes, toothpaste, and whitening strips.

2. Since at least as early as 1972, Opposer has validly, continuously and exclusively used the AQUAFRESH Marks in connection with oral care products.

3. Opposer is the owner of following registrations and applications of the AQUAFRESH Marks, all of which are valid and in full force and effect:

Registration No.	Mark	Goods	Date of First Use/ Priority date
1,006,821	AQUAFRESH	Toothpaste	August 25, 1972
1,662,981	AQUAFRESH FLEX	Toothbrushes	May 25, 1990
1,805,051	AQUAFRESH SENSITIVE	Toothpaste	June 26, 1992

Registration No.	Mark	Goods	Date of First Use/ Priority date
2,314,839	AQUAFRESH-ALL	Toothpaste	November 1, 1996
2,324,608	AQUAFRESH TRIPLE PROTECTION & Design	Toothpaste	March 29, 1999
2,326,773	AQUAFRESH TRIPLE PROTECTION & Design	Toothpaste	March 29, 1999
2,343,517	AQUAFRESH TRIPLE PROTECTION ALL WITH TARTER CONTROL & Design	Toothpaste	May 24, 1999
2,615,649	AQUAFRESH EXTREME CLEAN	Toothpaste	October 7, 1998
2,706,175	AQUAFRESH & Design Configuration	Toothbrushes	September 30, 2000
2,706,176	AQUAFRESH & Design Configuration	Toothbrushes	September 30, 2000
2,754,841	AQUAFRESH and Design Configuration	Toothbrushes	July 15, 1990
2,759,361	AQUAFRESH FLEX TIP MAX-ACTIVE	Toothbrushes	May 19, 2000
2,811,892	AQUAFRESH AQUABLAST	Toothbrush cleaners and oral appliance cleaners	March 26, 2003
2,814,290	AQUAFRESH EXTREME CLEAN	Toothbrushes	November 29, 2002
2,817,605	AQUAFRESH EXTREME CLEAN FOR A WHOLE NEW EXPERIENCE OF CLEAN!	Toothpaste	March 24, 2003

Registration No.	Mark	Goods	Date of First Use/ Priority date
2,820,508	AQUAFRESH CINNAMON SPLASH	Toothpaste	March 13, 2003
2,906,392	AQUAFRESH TRIPLE PROTECTION EXTREME CLEAN & Design	Toothpaste	March 24, 2003
2,929,043	AQUAFRESH & Design	Toothbrushes	November 4, 2003
2,935,093	AQUAFRESH & Design Configuration	Toothbrushes	September 1996
2,985,548	AQUAFRESH DIRECT	Toothbrushes	September 30, 2002
2,985,546	AQUAFRESH MAX- ACTIVE	Toothbrushes	September 30, 2002
2,985,544	AQUAFRESH	Toothbrushes	July 15, 1990
2,991,636	AQUAFRESH TRIPLE PROTECTION EXTREME CLEAN & Design Configuration	Toothpaste	March 24, 2003
3,022,013	AQUAFRESH ACTIVEZONE	Toothbrushes	April 5, 2004
3,058,216	AQUAFRESH XTENSIVE	Toothbrushes	March 31, 2004
3,110,249	AQUAFRESH IMPACT	Toothpaste	June 24, 2004
3,110,203	AQUAFRESH FOAM IMPACT	Toothpaste	May 13, 2004
3,218,965	AQUAFRESH WHITE & SHINE	Oral care preparations, namely dental gels, dentifrices	October 28, 2005

Registration No.	Mark	Goods	Date of First Use/ Priority date
3,228,880	AQUAFRESH FLOURIDE TOOTHPASTE TRIPLE PROTECTION & Design	Toothpaste	November 18, 2005
3,403,171	AQUAFRESH WHITE TRAYS	Oral care preparations, namely dental gels, bleaching preparations for cosmetic purposes, tooth whitening preparations and accelerators, cosmetic stain removal preparations Dental and oral care trays, namely, flexible and disposable dental bite trays	November 4, 2005
3,658,825	AQUAFRESH AMAZING	Oral care preparations, namely dentifrices, dental bleaching and cleaning gels, bleaching preparations for cosmetic purposes, tooth whitening preparations, accelerators and stain removal preparations for cosmetic purposes	October 23, 2007

4. Opposer's AQUAFRESH Marks make up a family of marks having a recognizable common characteristic in the form of the word AQUAFRESH. Opposer uses and promotes the AQUAFRESH Marks in such a way that the public associates the individual marks, as well as the common AQUAFRESH characteristic of those marks, exclusively with Opposer.

5. On June 11, 2009, Applicants Frank Ottaviani and Todd Spinelli filed intent-to-use application Serial No. 77/757308 to register the mark AQUAFREE for goods described as “electric toothbrushes; electrical toothbrushes; manual toothbrushes; toothbrushes” in International Class 21. Applicants’ mark was published in the Official Gazette on November 3, 2009. Opposer was granted an extension of time to oppose Applicants’ application to register the AQUAFREE mark up to and including March 3, 2010.

6. Long prior to Applicants’ first use (actual or constructive) of Applicants’ AQUAFREE mark, and as a result of widespread advertising and promotion by Opposer and of favorable third-party publicity, the AQUAFRESH Marks acquired a high degree of recognition, fame, and distinctiveness as a symbol of the quality of goods offered by Opposer. Specifically, the AQUAFRESH Marks are covered by federal registrations, have been the subject of extensive advertising and publicity, and have been sold throughout the United States. The public and the trade are familiar with and identify the AQUAFRESH Marks with Opposer and, by reason of this identification, goods associated with the mark are understood by the public and trade to be produced, marketed, and supplied under Opposer’s authority or otherwise derived from Opposer. As a result of their fame and notoriety, the AQUAFRESH Marks are entitled to a broad scope of protection.

7. Applicants’ AQUAFREE mark is virtually identical in appearance, sound and commercial impression to Opposer’s AQUAFRESH Marks, and is intended to be used for goods identical and closely related to the goods for which Opposer uses its AQUAFRESH Marks.

8. Based on the similarities of the marks and the goods, the relevant public is likely to be confused into believing that Applicants’ goods, as offered under the AQUAFREE mark, emanate from Opposer, or are authorized, licensed, endorsed, or sponsored by Opposer.

Registration of Applicants' AQUAFREE mark on the Principal Register thus would be inconsistent with Opposer's prior rights in its famous and distinctive AQUAFRESH Marks.

9. Opposer will be damaged by the registration of Applicants' AQUAFREE mark because it so resembles Opposer's previously used and well-known marks as to be likely, when used on or in connection with the goods identified in the subject application, to cause confusion, or to cause mistake, or to deceive in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052.

10. Opposer will be further damaged by the registration of Applicants' AQUAFREE mark because the mark is likely to dilute the distinctiveness of the famous AQUAFRESH Marks by eroding consumers' exclusive identification of these marks with Opposer, and/or by tarnishing and degrading the positive associations and prestigious connotations of these famous marks, and/or by otherwise lessening the capacity of the marks to identify and distinguish Opposer's goods and services in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

11. Opposer therefore requests that registration of the mark underlying Application Serial No. 77/757308 be refused, and this Notice of Opposition be sustained in Opposer's favor.

This 3rd day of March 2010.

Respectfully submitted,

/s/ Tywanda H. Lord

Theodore H. Davis Jr.

Tywanda H. Lord

Lauren T. Estrin

Attorneys for Opposer

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GLAXOSMITHKLINE LLC,)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	Serial No. 77/757308
TODD SPINELLI and FRANK)	
OTTAVIANI,)	
)	
Applicants.)	
)	

CERTIFICATE OF SERVICE

This is to certify that the attached Notice of Opposition has been served upon Applicants and Applicants' counsel of record by depositing a copy in the United States mail as first-class mail, postage pre-paid, addressed as follows:

Frank Ottaviani
46-04 31st Avenue
Astoria, NY 11103

Todd Spinelli
46-04 31st Avenue
Astoria, NY 11103

Michael K. Kroll, Esq.
115 Eileen Way, Suite 105
Syosset, New York 11791-5323

This 3rd day of March 2010.

/Lauren T. Estrin/

Lauren T. Estrin